



ALPHEUS

Corporate Overview & Dark Fiber Briefing

August 2004



El Paso/Alpheus Overview

- Founded as Waller Creek Communications soon after the passage of the 1996 Telecom Act;
- “efficient overbuild” strategy where state-of-the-art opto-electronics purchased and collocated within 85% of the SBC central offices in the five largest Texas cities;
- Traffic routed back to carrier grade hub facilities in each city for grooming and retransmission;
- State-of-the-art Network Operations Center for network monitoring and management;
- Transport-only, protocol agnostic carrier’s carrier, DWDM deployed in approximately 50% of network;
- Over \$300 MM spent to create a superior owned network. Where no alternative available, our facilities are connected by SBC UNE dark fiber;
- 66 employees across Texas;
- A poster child for the innovation and investment intended by the Telecom Act.

Alpheus Remains Impaired Without Access to ILEC Dark Fiber

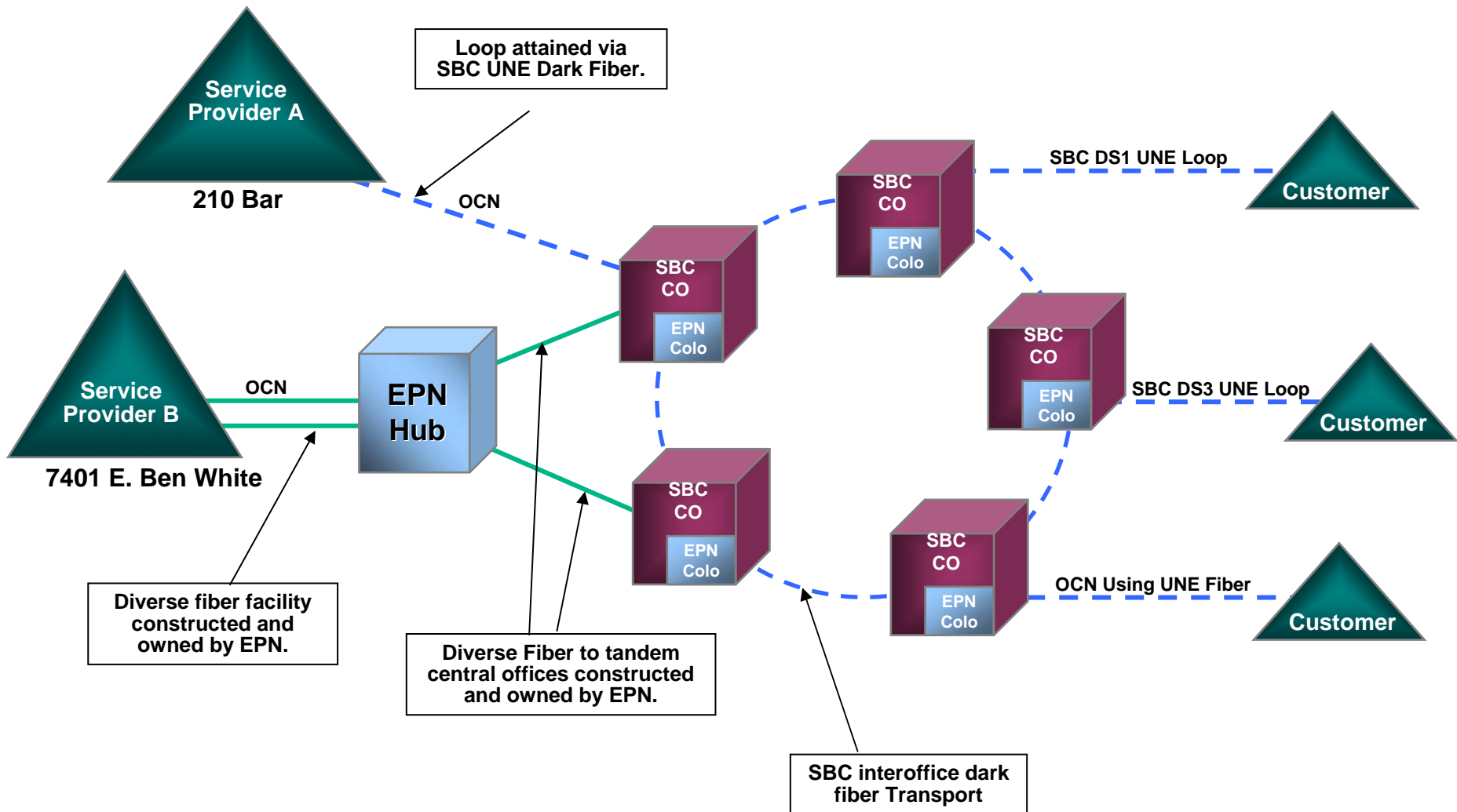
- Most recently the FCC, in August of 2003, voted 5-0 finding national impairment for dark fiber loops and transport,
- Neither financial markets nor municipalities will allow each company to lay separate fiber down every street;
- There can be no “arbitrage” with dark fiber; it is an idle raw material that requires investment and expertise to utilize.
- Without access to dormant fiber in the ground, innovation at the edge will be limited to the largest users.

El Paso/Alpheus

Current Situation

- won meaningful access to dark fiber at Texas PUC in 1999; currently pays SBC \$3.8MM in annual fiber rents that fall directly to SBC bottom line.
- have only sparingly used inactive ILEC resources to facilitate over \$300MM in spending to execute an “efficient overbuild” strategy.
- on most routes EP/Alpheus uses only four strands of fiber, when – even after that usage – more than 75% of SBC fiber is still unused. EP/Alpheus has deployed extensive Dense Wave Division Multiplexing (DWDM) technology to eliminate the need to order additional fibers on approximately 50% of the EP/Alpheus network.
- the vast majority of interoffice fiber was constructed years ago, not with risk capital but with a guaranteed rate of return through a captive consumer market.
- SBC has refused to negotiate long-term fiber leases *at any price or on any terms*.

Connecting Texas Businesses to Their Customers



TRO/USTA II

- Largely UNE-P focused: has no direct reference to dark fiber.
- DC Circuit vacated UNE rules for two reasons: unlawful delegation to the states & faulty impairment analysis.
- Primary problem with FCC impairment analysis: failed to consider availability of special access...***and there is no special access offering for dark fiber.***
- EP/Alpheus is ready to participate in any constructive dialogue to define dark fiber impairment test.
- If copper loops are the critical UNE for the voice market, dark fiber is the critical UNE for the “higher quality services...and rapid deployment of new telecommunications technologies” that Congress intended to promote.
- As UNE-P goes away, fiber becomes a much more important element in enabling the transition to facilities-based competition.

TRO Dark Fiber Analysis Remains Valid

- Dark fiber precisely addresses EP/Alpheus impairment: It is impaired without access to transmission facilities but is not impaired without access to the electronics to activate those facilities. TRO ¶¶ 381, 383 n. 1177
- Investment in electronics to activate dark fiber advances the goals of the Act in promoting facilities based competition. TRO ¶ 383
- Substantial cost of deploying transport facilities is the sunk cost of deploying fiber. TRO ¶ 382
- Dark fiber allows EP/Alpheus to serve customers with the least reliance on the SBC's facilities. TRO ¶ 313

Dark Fiber Analysis (con't)

- Presence of wholesale carriers using dark fiber to provide service to other carriers allows Commission to reduce unbundling of “lit” transport. See e.g. *TRO* ¶ 313
- EPN uses fiber that would otherwise be left unused and avoids unnecessary digging of streets where duplicative facilities remain idle and available. *TRO* ¶ 383
- Commission Voted 5-0 in favor of the Unbundling Regime for Dark Fiber
- The Telecom Act, at the very least, mandates access to the most organic, unintelligent network element - - dark fiber.

Status of Relationship

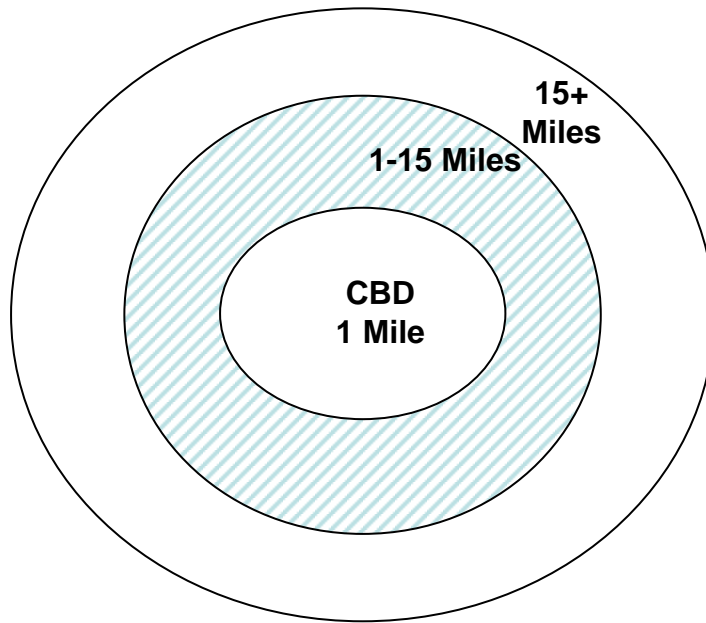
EXISTING STATUS OF SBC & EL PASO/ALPHEUS RELATIONSHIP

- SBC insists on terminating existing leases in a matter of months.
- SBC justification for discontinuing dark fiber as a UNE: UNCLEAR
- SBC justification for ignoring previous findings of Texas PUC and FCC: UNCLEAR
- SBC economic motivation to hoard dormant fiber despite plain language of '96 Act: Inhibit Facilities Based Competition*turning away very profitable business in order to retain broadband infrastructure is anti-competitive on its face.*
- Rationing of unused, unbundled dark fiber is in direct conflict with the language and the purpose of the '96 Act, not to mention the Administration's "Broadband by 2007" initiative.
- Restraint of trade in idle facilities is a naked abuse of market power.

Dark Fiber Impairment Framework

- In Texas metro markets, inside and within 1 mile of a given concentrated business district (“CBD”), there is a variety of competitive fiber in the ground.
- It is that area between 1 mile and 15 miles where presence of competitive fiber is more the exception than the rule.
- Similar patterns can be discerned in other metro markets through review of the records of state TRO proceedings, or perhaps through data already in the Commission’s possession.
- The presumption inside and within 1 mile of the CBD would be no impairment with the burden on the CLEC to show impairment on a specific transport route.
- Between 1-15 miles the presumption would be in favor of impairment. With the burden on the ILEC to prove competition (again on a route by route basis).
- Outside of 15 miles there are newer developments more likely to have competitive presence; thus presume no impairment, but CLEC can prove impairment on route specific basis.

Dark Fiber Impairment



Non-impairment



Impairment subject to Triggers

Conclusion

EP/Alpheus is the best example of what the 1996 Act intended to create. We provide next generation products that allow enhanced transport choices for carriers and their customers. We develop, deploy and operate our own network that strategically leverages dormant fiber infrastructure to create a superior broadband backbone that is both fast and protocol agnostic. No one else can duplicate our service for Metro Texas.